APPEAL NO. 010095

Following a contested case hearing held on September 21, 2000, and reconvening October 30, 2000, with the record closing on December 4, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the (hearing officer) resolved the disputed issues by concluding that the respondent (claimant) sustained an injury in the course and scope of his employment on _____; that the injury was not caused by the claimant's willful intention and attempt to injure himself; and that the claimant had disability resulting from the injury from February 5 through July 28, 2000. The appellant (carrier) appeals, urging that the hearing officer's findings and conclusions with respect to the issues be reversed and rendered in its favor because the claimant failed to meet his burden of proof on the issues of compensable injury and disability and because the carrier clearly established that the claimant staged or willfully intended to injure himself. The claimant responded, asserting the sufficiency of the evidence to support the challenged determinations.

DECISION

Affirmed.

The claimant testified that on _____, while unloading freight from a trailer, he noticed a "funny feeling" in his back and that it "started tightening up." He spoke to his union steward that day about his back problem and was told to report the incident if his symptoms continued. The claimant stated that, while unloading boxes and heavy rolls of fabric from a trailer, he experienced a sharp pain in his back which was different than the symptoms he had the previous day. He then reported this pain to his supervisor and was taken to be examined by the company doctor, Dr. C, who diagnosed lumbar strain, gave the claimant some anti-inflammatory and pain medicine, and returned him to full-duty work status.

Upon his return to the workplace, the claimant was told by management personnel that they knew he had falsified or intentionally caused his injury. The employer's "fraud hotline" had received, on February 3, 2000, an anonymous tip from another dockworker apprising the company of the claimant's intention to fake or cause an injury to himself. Because of the tip, on _____, the claimant was assigned to work in a trailer which could be easily monitored; apparently, no injury to the claimant was witnessed. According to the evidence, upon claimant's return from Dr. C, his employment was terminated for his alleged faking or intentionally causing a back injury. The claimant, a union member, then filed a grievance and, after a hearing, his employment was reinstated. There is no evidence in the record showing that the grievance panel made any factual findings with respect to the cause of the claimant's back pain.

According to the claimant, he returned to full work duty with the employer sometime between July 29 and August 3, 2000; was still required to perform heavy lifting and moving; and was given the job of moving some large drums. He said he was unable to perform

those duties and so informed his supervisor who informed the claimant that there was no light duty available.

The parties introduced conflicting evidence, including medical evidence, with respect to whether, on _____, the claimant incurred a back injury in the course and scope of his employment; whether he intentionally staged or faked the claimed injury; and whether he had disability. The claimant's treating physician, Dr. F, testified that upon his examination of the claimant and his review of an MRI report, he determined that the claimant had suffered moderate to severe lumbar strain/sprain, lumbar facet dysfunction, lumbar disc disruption syndrome with radiculitis, a broad-based disc bulge, and a left posterolateral annular tear with mild to moderate bilateral stenosis. Dr. F testified that he did not review the actual MRI films, but had no reason to question the written report upon which he relied.

The carrier retained a board-certified neuroradiologist, Dr. S, to review the claimant's February 14, 2000, MRI report and films. Dr. S determined that, while the claimant suffered from some degenerative processes in his spine, he did not have a bulging disc, nor did he have an annular tear. Dr. S opined that the claimant's MRI was essentially within normal limits for a 38-year-old man who has for years performed manual labor. Dr. S also testified that he had reviewed and used as diagnostic tools thousands of MRI films.

Pursuant to Section 410.165(a) of the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. Further, the hearing officer resolves the conflicts and inconsistencies in the evidence, including the medical evidence, and determines what facts have been established from the conflicting evidence. *See* Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ); St. Paul Fire & Marine Ins. Co. v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The fact finder may believe all, part, or none of any witness's testimony and may draw reasonable inferences and deductions from the evidence. Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied). The hearing officer may take into account a witness's relationship to a party. Lindley v. Transamerica Ins. Co., 437 S.W.2d 371 (Tex. Civ. App.-Fort Worth 1969, no writ).

The factual and medical evidence proffered by the claimant and by the carrier was conflicting. This tribunal will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. We do not find them so here. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer's decision and order is affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge